

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of)	No. HEA 2020-Ethics
)	
Ron Peltier, Complainant)	
)	
v.)	REVIEW OF
)	ETHICS COMPLAINT
)	
Suzanne Keel-Eckmann, Ingrid Billies,)	
Mardel Gale, & Brian Strully)	
)	
<u>Regarding an Ethics Complaint</u>)	

BACKGROUND

The Complaint

Ron Peltier filed an Ethics Complaint Form with the City Clerk on January 28, 2020, alleging violations of the Code of Conduct (Article I) by four former members of the City of Bainbridge Island Ethics Board (Ethics Board). In his complaint, Mr. Peltier specifically alleges violations of Section B, Core Values, 2. Integrity; and Section C, Ethics Principles, 1. Obligations to the Public. In response to a question on the Ethics Complaint Form asking for factual support of the allegations of ethical violations, Mr. Peltier states that the “1/27/20 letter of resignation signed by respondents” is attached as well as “additional comments.”

In his comments, Mr. Peltier states that, in his opinion, the Washington State Open Public Meetings Act (OPMA), chapter 42.30 RCW, applies to the Ethics Board and that the four members named in his complaint violated OPMA by “conducting a secret meeting” to discuss issues “related to the City’s Ethics Program.” Mr. Peltier claims that, by violating OPMA, the four members thereby also violated Article I of the City’s Code of Conduct. He states that they did this in the following ways:

By conducting a secret meeting, the four members “failed to promote lawful policies and failed to uphold the highest standards of the community in violation of Article I, B. 2.; and that

By conducting a secret meeting, the four members acted “contrary to promoting the public good and perserving the public’s trust” as well as exhibiting “a lack of transparency by depriving the public of its lawful right to observe how a quorum of the Ethics Board conducts its business” in violation of Article I, C.1.

Mr. Peltier attached a copy of the letter of resignation, dated January 27, to his complaint as part of the statement of facts supporting his complaint. He alleges that the letter itself reveals that the four members of the Ethics Board met in secret to discuss the new ethics resolution recently adopted by the City Council, and agreed together to resign. He states there are no minutes of any public meeting where resignation is discussed in an open meeting. He admits, however, that such a discussion may have occurred, but it was not captured in the minutes.

Council Resolution 2019-26

The City Council adopted Resolution 2019-26 on November 26, 2019, with an effective date of February 1, 2020. The resolution, however, provides that the “Ethics Board shall not, without Council approval, consider any complaint . . . until Section 1 of this resolution takes effect” and that “Section 2 of this resolution shall take effect and be in force immediately upon passage.” The Council apparently did this to allow the Ethics Board a period of transition from the old legislation to the new legislation.

The resolution provides the process by which complaints must be filed and considered by the Ethics Board. It notes that the “Code of Conduct and Ethics Program” detailed in the resolution is intended to supplement state and federal law, and that members of City Committees must comply with state and federal laws in performance of their public duties.

Article I of the resolution establishes four Core Values and three Ethics Principles to guide conduct by City Council members and members of City Committees and Commissions. Article II establishes additional Code of Ethics rules, none of which are involved in the allegations of Mr. Peltier. Article III of the resolution provides the procedures for filing and reviewing a complaint. The complaint is to be filed with the City Clerk, alleging violations of either Article I, Article II, or the Employee Manual. Here, Mr. Peltier alleges violations of Article I. The resolution further provides that, if a complaint alleges one or more violations of Article I by the Ethics Board, the City Clerk must refer the complaint to the Hearing Examiner.

The Role of the Hearing Examiner

Under the resolution, the Hearing Examiner must make a threshold determination as to whether the complaint is reasonably credible and whether the facts asserted in the complaint, if true, would constitute a violation of the Article I Code of Conduct. If it is determined, following legal review, that the complaint lacks reasonable credibility, the Hearing Examiner must issue a written determination to the City Clerk dismissing the complaint. If it is determined by the Hearing Examiner that the facts stated, if true, would *not* constitute a violation, then the complaint must also be dismissed with no further action by the Hearing Examiner. If, however, the Hearing Examiner determines that the complaint is reasonably credible and that the facts asserted, if true, would constitute a violation of the Code of Conduct in Article I, then the Hearing Examiner must, after legal review, transmit the determination to the City Clerk who must refer the complaint to a mediator for reconciliation. *Code of Conduct and Ethics Program, pages 14-15.*

*Before the Hearing Examiner
Of the City of Bainbridge Island
Review of Ethics Complaint by Peltier*

REVIEW OF COMPLAINT

The complaints made by Mr. Peltier are not ones that can be considered by the Hearing Examiner under the resolution adopted by the City Council. The City's Code of Conduct and Ethics Program applies only to persons actively associated with city government, not those who have resigned or completed their terms. This is made clear (1) in the preamble to Article I, which applies only to "Councilmembers and members of City Committees and Commissions"; (2) in the introduction to Article II, which states that the Code of Ethics applies only to "individuals serving on City Committees and Commissions"; and (3) in Article III, which requires that a complaint must allege violations of the Code of Conduct or the Code of Ethics "by a Councilmember or a member of a City Committee or Commission." *Code of Conduct and Ethics Program, pages 7, 9, & 14.*

The restriction of the application of the Code of Conduct and Ethics Program to only *members* of the City Council, committees, or commissions makes sense. Otherwise, anyone at any time could allege a violation of the Code of Conduct for past behavior of one who was once a member of the Council, a committee, or a commission for behavior that is long past, where facts may be difficult to ascertain and the conduct alleged is no longer damaging to ongoing governmental operations. Such alleged violations by persons no longer a member of the council, committee or commission fall outside the scope of the Code of Conduct and Ethics Program, even if true. The Council, when adopting the Code of Conduct and Ethics Program, did not intend that allegations be made for conduct in the past by one who is no longer a member of the City Council, a commission, or a committee. Ethical considerations and a code of conduct apply to those who are currently serving, to help foster confidence in the decisions made by those currently involved in city government.

The individuals named by Mr. Peltier in his complaint resigned before the complaint was filed with the City. Complaints may only be filed when the individual named is a member of the City Council, a committee, or a commission. The individuals named in the complaint are no longer members of the Ethics Board. Therefore, the complaint must be dismissed as moot.

Moot means that the issue raised is "of little or no practical value, meaning, or relevance" so that, "in practical terms, the issue . . . is moot because the deadline has passed."¹ Washington courts have also addressed mootness. Our state supreme court has decided that a case is moot if effective relief can no longer be provided.² The ultimate sanction for a board member found to be in violation of the code of conduct or of an ethical rule would be removal from the board.³

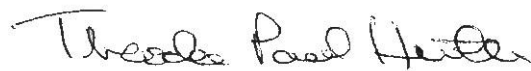
¹ Dictionary.com definition of "moot," as determined online on 2/12/20.

² See, e.g., *State v. Hunley*, 175 Wn.2d 901, 287 P.3d 584 (2012); *In re Det. of M.W.*, 185 Wn.2d 633, 374 P.3d 1123 (2016).

³ *Code of Conduct and Ethics Program, page 22.* It is noteworthy that sanctions are to be administered by the City Council "to the Councilmember or member of a City Committee or Commission who has violated

Here, once a resignation of the board member occurs, in effect the deadline for filing a complaint has passed. Any complaint filed under the City's Code of Conduct and Ethics Program after the resignations were submitted is moot. Therefore, the complaint must be dismissed. This decision constitutes the written determination to the City Clerk and the dismissal of the complaint, as required by Resolution 2019-26.⁴

Decided this day 24th day of February 2020.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

the Code,” clearly indicating that the individual involved must be a member at the time the sanction is administered. The section on sanctions also provides that those expressed in the resolution are in addition to “any other penalty, sanction, or remedy which may be imposed or sought according to law or equity.” Removal of a member from the council, committee, or commission where the member served is the ultimate sanction. If a member has already resigned, no sanction is possible because there is no effective relief that could be granted: the case is moot.

⁴ In his complaint, Mr. Peltier also alleges violations of the Open Public Meeting Act, chapter 42.30 RCW, which also specifies what sanctions may apply. Those allegations and any determination of violations are best directed to the superior court, which has the authority to decide them and to assess penalties. The Hearing Examiner makes no decision on the merits of those allegations.

*Before the Hearing Examiner
Of the City of Bainbridge Island
Review of Ethics Complaint by Peltier*